

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK WILLIAM SCHNEIDER,

Defendant-Appellant.

UNPUBLISHED

June 27, 2006

No. 260482

Macomb Circuit Court

LC No. 2004-001882-FH

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, third-degree fleeing or eluding a police officer, MCL 750.479a(3), possession of cocaine, MCL 333.7402(2)(a)(v), accosting or soliciting a prostitute, MCL 750.448, and driving while license suspended, MCL 257.904(1). He was sentenced to concurrent prison terms of two to four years for the assault conviction, two to five years for fleeing or eluding conviction, and two to four years for possession of cocaine conviction, and jail terms of 93 days for accosting and soliciting and one year for driving while license suspended. He appeals by right, challenging the fleeing or eluding and assault convictions. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the evidence was insufficient to support his fleeing or eluding conviction because it failed to show that the law enforcement officers were in uniform. See MCL 750.479a(1); *People v Grayer*, 235 Mich App 737, 740-741; 599 NW2d 527 (1999).

When reviewing the sufficiency of the evidence in a criminal case, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992).

At trial, Lt. Berlin testified that he was wearing a police t-shirt with the word “police” emblazoned on the front and back. He wore his silver badge that said “Police Detective Sergeant” on his chest attached to a neck chain. He testified that the kind of uniform a Roseville police officer wears on routine patrol depends on the officer’s assignment. The department manual specified different uniforms, and the shift commander allowed variations. Although defense counsel inquired whether officers meeting with the public had more limitations on their uniform, Berlin maintained, “I meet with the public like on this day here, I could be wearing just

a police t-shirt with a silver badge around my neck. All those uniforms are specified by our rules and regulations. And there's other uniforms also, again depending on your assignment."

"The plain language of the statute . . . merely provides that the officer must be in uniform." *People v Green*, 260 Mich App 710, 720; 680 NW 2d 477 (2004). "It does not contain any minimum requirements for an officer's uniform." *Id.* Viewed in a light most favorable to the prosecution, Lt. Berlin's testimony was sufficient to establish the uniform requirement of the statute beyond a reasonable doubt. Notwithstanding this, evidence was also adduced that defendant eluded a marked Wayne County Sheriff's vehicle being operated by a uniformed deputy before defendant came to stop.

Defendant also argues that his conviction for felonious assault was against the great weight of the evidence because Lt. Berlin's testimony was not credible, because as it was not corroborated and lacked details. Contrary to the prosecution's contention on appeal, a defendant convicted in a bench trial need not move for a new trial in order to preserve the issue for appeal. MCR 7.211(C)(1)(c).

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Where a challenge to the great weight of the evidence follows a bench trial, this Court examines the trial court's findings for clear error, giving regard to the court's special opportunity to judge the credibility of witnesses. MCR 2.613(C). Thus, absent exceptional circumstances, the issue of credibility should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

Lt. Berlin's testimony supports defendant's felonious assault conviction. Lt. Berlin's account was not patently incredible, inherently implausible, or in defiance of physical realities. *Id.* at 643-644. This case does not involve any exceptional circumstances that would warrant this Court interfering with the trial court's assessment of Lt. Berlin's credibility.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter